IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 16534 of 2006(R)

PETITIONER:

P.S.RAVEENDRAN NAIR, ASSISTANT
EXECUTIVE ENGINEER, ELECTRICAL SUB DIVISION,
CHITHIRAPURAM, IDUKKI DISTRICT.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS:
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1. **KERALA STATE ELECTRICITY BOARD,**
   REPRESENTED BY ITS SECRETARY,
   VYDHYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.

2. **THE CHIEF ENGINEER (H.R.M),**
   KERALA STATE ELECTRICITY BOARD,
   VYDHYTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.K.S.ANIL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/04/2007, THE COURT ON 03/08/2007 DELIVERED THE FOLLOWING:

W.P.(C)NO.16534/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER DT. 6.12.2000 ISSUED BY THE 2ND RESPONDENT.

EXT.P2:- COPY OF THE ORDER DT. 6.2.03 ISSUED BY THE 2ND RESPONDENT.

EXT.P3:- COPY OF THE ORDER DT. 2.7.05 ISSUED BY THE 2ND RESPONDENT.

EXT.P4:- COPY OF THE ORDER DT. 6.7.05 ISSUED BY THE 2ND RESPONDENT.

EXT.P:- COPY OF THE JUDGMENT IN CC. NO.8./02 OF THE COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THRISSUR.

EXT.P6:- COPY OF THE ORDER DT. 13.12.05 ISSUED BY THE 2ND RESPONDENT.

EXT.P7:- COPY OF THE ORDER DT. 6.12.05 ISSUED BY THE 2ND RESPONDENT.

EXT.P8:- COPY OF THE JUDGMENT DT. 19TH JANUARY, 2006 WP.(C) NO.672/06 OF THIS HON'BLE COURT.

EXT.P9:- COPY OF THE ORDER NO.EBVS.4/55/2000/400. DT. 4.5.06 ISSUED BY THE 2ND RESPONDENT.

/TRUE COPY/

P.S. TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.16534 OF 2006-R

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Dated this the 3rd day of August, 2007.

JUDGMENT

The petitioner challenges Ext.P9 by which the competent authority in the Kerala State Electricity Board has decided to regularise the period spent by him under suspension as eligible leave or leave without allowance, which will not count for any other purpose.

2. While working as Assistant Engineer, Electrical Major Section, Chithirapuram, the petitioner was involved in a trap case by the Vigilance and Anti-Corruption Bureau, Idukki Unit and was placed under suspension. Later, the suspension was revoked and he was transferred and posted to Transmission Circle, Poovanthuruthu, in

terms of the directions of the Vigilance and Anti-Corruption Bureau. By Ext.P5 judgment, the Enquiry Commissioner and Special Judge, Thrissur found that the petitioner, the accused in that case, is not guilty of the charges levelled against him. He was accordingly acquitted under Section 248(1) of the Code of Criminal Procedure.

3. Following his acquittal, as per Ext.P7, the period spent by the petitioner under suspension was ordered to be treated as eligible leave without allowance which will not count for any other purpose. He moved this Court resulting in Ext.P8 judgment directing the second respondent to re-hear the petitioner since Ext.P7 was issued without hearing him. It was also directed that in doing so, the grounds raised by the petitioner, including his reference to the decision of the Apex Court in **Sulekh Chand and Salek Chand v. Commissioner of Police and Others** [1994 (5) SLR 742] and the various documents produced along with the said writ petition should also be considered by the second respondent. It is thereafter

that the impugned Ext.P9 order was passed by the second respondent, after hearing the petitioner.

4. In support of the writ petition, the learned counsel for the petitioner argued that Ext.P5 judgment is one acquitting the petitioner of blame and therefore, the period of suspension is only to be treated as period which can be counted for pension and other benefits, in terms of Rule 56B in Part I Kerala Service Rules. It was further argued that adjustment of his pay and allowances during the period under suspension should have been made by giving him the full amount since he has been acquitted of blame.

5. The learned counsel for the respondents argued that Ext.P5, though has resulted in acquittal of the accused, is not an order of acquittal of blame and is not one on the basis of which the petitioner could seek the reliefs sought for. He further argued that all relevant facts and factors have been taken into consideration by the competent authority in issuing

the impugned Ext.P9.

6. Rule 57 Part I KSR provides, among other things, that an officer who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours, shall be deemed to be under suspension with effect from the date of commencement of the detention and shall not be allowed to draw any pay and allowances during such period of suspension other than any subsistence allowance or allowances that may be granted under Rule 55. It also enjoins that an adjustment of his pay and allowances for the period of suspension should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame. Rule 56B in Part I KSR provides, among other things, that when an officer who has been suspended has been reinstated or would have been reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and

make a specific order regarding the pay and allowances to be paid to the officer for the period of suspension and whether or not the said period shall be treated as period spent on duty.

7. In **Sulekh Chand and Salek Chand** (supra), the Apex Court was dealing with a case where the acquittal led to reinstatement as if there is no blot on the delinquent's service and the need for the departmental enquiry is obviated. It was noticed on the facts of that case that the acquittal was on merits and was not merely one where the delinquent officer's acquittal was on technical grounds. I may immediately notice that the nature of findings of the criminal court in that case is not discernible from the report of the judgment.

8. In **Krishnakant Raghunath Bibhavnekar v. State of Maharashtra** (AIR 1997 SC 1434), the Apex Court was dealing with a case of a Government servant prosecuted for commission of defalcation of public funds and fabrication of records and the prosecution culminated in acquittal. It was

noticed that the disciplinary authority could have enquired into the self-same conduct unless the trial and acquittal by the criminal court ended up in an acquittal recording a positive finding that the accused did not commit the offence at all. Even otherwise, on reinstatement, the appropriate authority may, following the principle of natural justice, pass appropriate orders, including the manner in which the period of suspension has to be treated, whether the period is to be treated as duty or otherwise. It was held that when the suspension period of the employee charged for committing criminal breach of trust was treated to be a suspension pending trial, he was not entitled to consequential benefits, on reinstatement into service even after acquittal, if that order of acquittal is not one which results in a positive finding that the accused did not commit the offence at all. It was insufficient that he gets a technical acquittal or an acquittal on benefit of doubt.

9. Dealing with Rules 56 and 57 in Part I KSR, the

Apex Court in **K.Ponnamma v. State of Kerala** [(1997) 9 SCC 36] held that the nature of the order to be issued by the competent authority is one which is discretionary depending upon the facts of the case.

10. In Ext.P5 case, the petitioner was charge-sheeted on the accusation of an offence punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption of Act, 1988. The proceedings were initiated on the basis of a complaint made by Sri.R.Udayamoorthy, P.W.2 in that case who, after the laborious exercise of the Vigilance and Anti-Corruption Bureau, turned hostile before the criminal Court. The laying of the trap and the making of the complaint by P.W.2, Udayamoorthy are matters proved in the criminal Court. He owned his signature in Ext.P4 first information statement but disputed its contents. P.W.3, Agricultural Officer attached to the Krishi Bhavan, was a witness to that trap laid. He deposed in support of the prosecution. I called for and perused the file of C.C.No.8 of

2002 of the Court of the Enquiry Commissioner and Special Judge, Thrissur in which Ext.P5 judgment was delivered. The said case tilted in favour of the petitioner only because P.W.2, the defacto complainant Udayamoorthy, an engineering graduate and planter and the son of a former member of the Panchayat Committee, turned hostile and took the stand that decoy currency notes smeared with phenolphthalein powder were not actually taken by the petitioner but were placed between the files by Udayamoorthy without the knowledge and consent of the petitioner. A reading of Ext.P5 judgment would pivotally show that but for P.W.2 Udayamoorthy turning hostile, there was clear material to conclude against the petitioner. Ext.P5 is not an order of acquittal of blame. It is the result of a witness, that too, a defacto complainant in a vigilance case charge-sheeted for an offence under the PC Act, turning hostile. Under such circumstances, the impugned Ext.P9 cannot be found fault with.

In the result, the writ petition fails. The same is

accordingly dismissed with costs. Advocate's fee fixed at Rs.5,000/-.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-